

REMARKS**Overview**

Claims 1-17 are pending in this application. The present response is an earnest effort to overcome all rejections. Reconsideration and passage to issuance are therefore respectfully requested.

Issues Under 35 U.S.C. § 103

Claims 1-5, 7, 8, 12, 16 and 17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 3,693,370 to Miller in view of U. S. Patent No. 1,887,580 to Copeman. The Examiner relies upon Miller as a primary reference, but recognizes that Miller lacks a block of ice situated above a refrigerator coil (Office Action, page 2). The Examiner indicates "it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify and/or provide the disclosed invention of Miller with a block of ice as taught by Copeman as a more efficient means or method of cooling a refrigerator with a coil tube." The Applicant respectfully disagrees and submits that the Examiner's combination is based on an unsuggested modification and is therefore improper, as the Examiner is violating long established patent law by using hindsight reconsideration in attempting to plug the gaps of the prior art. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 U.S.P.Q. (BNA) 543, 551 (Fed. Cir. 1985).

Not only does Miller not disclose a block of ice situated above the refrigerator coil, Miller only discloses using dry ice (solid carbon dioxide) having a sublimation temperature of about -78° C (col. 2, lines 8-19).

Dry ice and ice have significantly different properties. In particular, at normal pressures dry ice does not melt into liquid carbon dioxide, but rather sublimates directly into carbon dioxide gas.

If the dry ice of Miller is replaced with solid ice, the apparatus of Miller would no longer work for its intended purpose. As column 2, lines 8-19 of Miller explain:

"The liquid medium employed as the heat transfer medium should, therefore, have a boiling point substantially above the temperature of the solid carbon dioxide, which at 760 m.m. has a sublimation temperature of about -78° C. The liquid medium should have a boiling point substantially below the ambient temperature. In the case of refrigerator, this is preferably below about 5° C in the case of food storage. For example, I may use Freon-12, which is a material sold by DuPont - De Nemours Co., and said to be dichloro-difluoro-methane having a boiling point at 760 m.m. pressure of — 29° C."

Therefore, if one were to substitute ice for the dry ice of Miller, the required relationships would be disrupted and the device would not function for its intended purpose. As the prior art device would become inoperable if modified as suggested by the Examiner, it is clear that there is no proper motivation or suggestion to combine. In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Therefore, this rejection must be withdrawn.

Conclusion

It is respectfully submitted that all claims are in proper form for immediate allowance as all claims are patentably distinct over the prior art. Reconsideration and passage to issuance is therefore respectfully requested.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any

additional fees to Deposit Account No. 26-0084.

Respectfully submitted,



JEFFREY D. HARTY, Reg. No. 40,639
MCKEE VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 22885

Attorneys of Record

- bja -